



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/11879/2018

**THE IMMIGRATION ACTS**

Heard at Bradford  
On 29 November 2019

Decision & Reasons Promulgated  
On 10 December 2019

Before

UPPER TRIBUNAL JUDGE LANE

Between

AMARJEET [G]  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr Hussain, instructed by Halliday Reeves

For the Respondent: Mrs Pettersen, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. By a decision promulgated on 19 June 2019, I found that the First-tier Tribunal had erred in law such that its decision fell to be set aside. My reasons for so finding were as follows:

“1. The appellant is a male citizen of Afghanistan and was born on 23 August 1977. He appealed against a decision of the Secretary of State dated 25 July 2018 refusing protection claim. The First-tier Tribunal, in a decision promulgated on 28 November 2018, dismissed his appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. I have a Rule 24 letter from the Secretary of State dated 14 January 2019 which indicates that the respondent does not oppose the appeal. The Secretary of State's position was confirmed by Mrs Pettersen, who appeared for the respondent at the initial hearing. Given that both parties agree that judge erred in law such that his decision falls to be set aside, I have set aside the decision. We shall therefore give brief reasons only.

3. The grounds of appeal complain that the judge has not given any or any sufficient reasons for finding that it would not be unduly harsh to expect the appellant to relocate to Kabul. The appellant is a Sikh. Judge accepted that he had given a truthful account of the real risk he would face on return to his home city of Jalalabad. At [27], the judge recorded the appellant's evidence under cross-examination and his claim that he faced harassment 'by the government' should he relocate to Kabul. At [28], the judge identified 'several problems' with the appellant's account of having been ill-treated by the authorities in Kabul (and likely to face a real risk of future harm), in particular casting doubt on the appellant's claim that the authorities would seek to ill-treat him at all, a claim not consistent with the background country information. It is true that the judge moves on from these two paragraphs to a finding that the appellant would be safe in Kabul without directly addressing the issues raised in the country guidance case of TG and Others (Afghan Sikhs persecuted) [2015] CG UKUT 595 (IAC). It would, however, be possible for a reader of the decision to be aware that the judge's account of the cross examination and his comments at [28] amounted to a finding that relocation to the capital city would not be unduly harsh. However, given the position adopted by both parties I am prepared to set aside the decision. I have, however, decided not to remit this appeal to the First-tier Tribunal but rather to keep it in the Upper Tribunal where I shall remake the decision following a resumed hearing. I am aware that I indicated in court that the appeal would be remitted but, on reflection, I see no reason to interfere with the findings of fact made by the judge. The resumed hearing, therefore, will proceed on the basis of those findings save for what the judge has said regarding the option of internal flight. The issue of internal flight will be the only issue remaining to be determined before the Upper Tribunal. Both parties may rely on fresh evidence provided copies of any documentary evidence, including witness statements, are sent to the other party and to the Upper Tribunal no less than 10 days prior to the resumed hearing.

#### **Notice of Decision**

The decision of the First-tier Tribunal is set aside. All of the findings of factual stand save for those concerning the option of internal flight within Afghanistan. The evidence given by the appellant that the First-tier Tribunal and recorded by judge at [27] shall stand as a record of what the appellant stated in evidence before the First-tier Tribunal. Both parties may rely on fresh evidence provided copies of any documentary evidence, including witness statements, are sent to the other party and to the Upper Tribunal no later than 10 days prior to the resumed hearing."

2. The burden of proof in the appeal rests on the appellant. The standard of proof is whether there are substantial grounds for believing that be a real risk that the appellant faces persecution or ill-treatment contrary to Articles 2/3 ECHR if he is returned to Afghanistan.

3. At the resumed hearing at Bradford on 29 November 2019, the appellant gave evidence in Punjabi with the assistance of an interpreter. He adopted his written statement as his evidence in chief. Cross-examined by Mrs Pettersen, who appeared for the Secretary of State, the appellant said that he had last resided in Jalalabad at a Sikh temple there and that his brother had supported him financially. The appellant's brother has now left Afghanistan and the appellant does not know where he is now living. The appellant contradicted the evidence of the expert witness, Dr Giustozzi, when he said that there is only one temple in Kabul; the expert claims in his report that there were two temples. In any event, the appellant believed that living for any length of time within the confines of a Sikh temple would be simply unsustainable.
4. I reserved my decision.
5. The current country guidance is provided in TG and others (Afghan Sikhs persecuted) Afghanistan CG [2015] UKUT 595 (IAC). The headnote states:

*'(i) Some members of the Sikh and Hindu communities in Afghanistan continue to suffer harassment at the hands of Muslim zealots.*

*(ii) Members of the Sikh and Hindu communities in Afghanistan do not face a real risk of persecution or ill-treatment such as to entitle them to a grant of international protection on the basis of their ethnic or religious identity, per se. Neither can it be said that the cumulative impact of discrimination suffered by the Sikh and Hindu communities in general reaches the threshold of persecution.*

*(iii) A consideration of whether an individual member of the Sikh and Hindu communities is at risk real of persecution upon return to Afghanistan is fact-sensitive. All the relevant circumstances must be considered but careful attention should be paid to the following:*

*a. women are particularly vulnerable in the absence of appropriate protection from a male member of the family;*

*b. likely financial circumstances and ability to access basic accommodation bearing in mind*

*- Muslims are generally unlikely to employ a member of the Sikh and Hindu communities*

*- such individuals may face difficulties (including threats, extortion, seizure of land and acts of violence) in retaining property and / or pursuing their remaining traditional pursuit, that of a shopkeeper / trader*

*- the traditional source of support for such individuals, the Gurdwara is much less able to provide adequate support;*

*c. the level of religious devotion and the practical accessibility to a suitable place of religious worship in light of declining numbers and the evidence that some have been subjected to harm and threats to harm whilst accessing the Gurdwara;*

*d. access to appropriate education for children in light of discrimination against Sikh and Hindu children and the shortage of adequate education facilities for them.*

*(iv) Although it appears there is a willingness at governmental level to provide protection, it is not established on the evidence that at a local level the police are willing, even if able, to provide the necessary level of protection required in Refugee*

*Convention/Qualification Directive terms, to those members of the Sikh and Hindu communities who experience serious harm or harassment amounting to persecution.*

*(v) Whether it is reasonable to expect a member of the Sikh or Hindu communities to relocate is a fact sensitive assessment. The relevant factors to be considered include those set out at (iii) above. Given their particular circumstances and declining number, the practicability of settling elsewhere for members of the Sikh and Hindu communities must be carefully considered. Those without access to an independent income are unlikely to be able to reasonably relocate because of depleted support mechanisms.*

*(vi) This replaces the county guidance provided in the cases of K (Risk - Sikh - Women) Afghanistan CG [2003] UKIAT 00057 and SL and Others (Returning Sikhs and Hindus) Afghanistan CG [2005] UKAIT 00137.'*

6. Although the appellant appeared to contradict his own previous written statement in oral evidence as to whether or not he had worked when living in Jalalabad, I accept what he told me as generally accurate and true. I am reminded that I am concerned only with the question of internal flight and whether this may alternative to return to his (unsafe) home area would be unduly harsh for the appellant and his family; the First-tier Tribunal has already established that the appellant cannot safely return to his home area of Jalalabad. I accept the appellant's description of living in the Sikh temple in Jalalabad as very difficult. His experience of living in such a place in Jalalabad had been unpleasant; for example, he described how bodies arriving in the temple for cremation had been laid out in a part of the temple where his children would see them at close quarters. I accept also that the appellant would find it very difficult, if not impossible, to leave the temple safely and seek work in the wider community within Kabul. Instead, the appellant and his family would face an indeterminate period of time living in the confines of the temple, which Mr Hussain, who appeared for the appellant before the Upper Tribunal, submitted would amount to an 'excessively constrained existence.' It is also clear that the Afghanistan state is generally unable and, at a local level, unwilling to offer sufficiency of protection to Sikhs beyond the confines of a temple.
7. As indicated above, the appellant has that produced an expert report in support of his appeal prepared by Dr Giustozzi. Mrs Pettersen submitted that this document should not be afforded great weight, not least because of the evident lack of care with which it had been prepared. At [24], [34] and again at [51], the report refers by name to individuals who are not the appellant or any member of his family and appear to have nothing whatever to do with his appeal. Any reader of the report would be left with the firm impression that Dr Giustozzi has simply cut and pasted whole paragraphs from reports which he has prepared in the appeals of other appellants, errors which Dr Giustozzi has failed to correct by proof reading the document. I accept that the report is far from satisfactory and that it betrays a slipshod method of working on the part of the expert. However, Mrs Pettersen did not seek to cast doubt upon the substance of the report which, notwithstanding the references to third parties not connected with the appeal, clearly seeks to address the position of Sikhs in Afghanistan, a field in which Dr Giustozzi is an acknowledged specialist.

8. I am reminded by the decision in *TG* of the need to consider each case on its particular facts. The appellant suffers from mental difficulties which the reporting expert, Dr Maggie Allison, a chartered counselling psychologist, attributes to PTSD suffered by the appellant. Dr Allison refers in her report of 2 August 2019 to the likelihood of the symptoms of PTSD mitigating entirely with the passage of time but notes that the appellant has not reported any diminishing of his symptoms. As a consequence, Dr Allison considers that the appellant will require further treatment. I accept that, if the appellant is compelled to live within the precincts of a Sikh temple, it is very doubtful that he would be able to obtain such services in Kabul. Moreover, I accept that the appellant does not have friends or contacts or family members living in Kabul who would be able to assist him in leaving the Sikh temple safely in order to seek work. As *TG* makes clear, those without independent sources of income from work are otherwise likely to find it unreasonably difficult to establish themselves and support their families following relocation.
9. I accept, on the basis of all the evidence, that there is no alternative for the appellant and his family, on relocation to Kabul, than living in a Sikh temple for an indeterminate period of time. Without the prospect of leaving the temple because the lack of independent sources of finance or the likelihood of safely obtaining employment, I find that, although acceptable in the short term, residence in the medium and longer term in the Sikh temple would mean that the appellant, his mental health difficulties probably exacerbated by the stress of confined living, would be living in unreasonable and unduly harsh circumstances. I find, therefore, that the option of internal flight, on the particular facts in the appellant's appeal and in the light of the expert evidence and background material, is not an acceptable and reasonable alternative to life in his home area of Jalalabad where it has already been established that he faces a real risk of harm. I reach that conclusion aware that the country guidance of *TG* records at the outset that Sikhs in Afghanistan are not generally at real risk '*per se*.' The application of the country guidance to the facts in this appeal leads me to conclude that the internal flight alternative would be unduly harsh. I therefore allow his appeal.

### **Notice of Decision**

The appellant's appeal against the decision of the Secretary of State dated 25 July 2018 is allowed on asylum and human rights (Article 3 ECHR) grounds.

Signed

Date 2 December 2019

Upper Tribunal Judge Lane